THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1840 of 2007

Dated:13.03.2007

Between:

Rahamania Dudekula (Pinjari) Society.

…Petitioner

and

The District Collector and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1840 of 2007

ORDER:

The petitioner is a Society registered under the Societies Registration Act, 1860. Alleging that Midthur Gram Panchayat is constructing shopping complex in the graveyard belonging to the petitioner in Survey No.678/B/1A, the petitioner filed the instant Writ Petition for declaration and consequential direction to the respondents not to interfere with the graveyard.

It is the case of the petitioner that there is a burial ground in Survey No.678/B/1A in Midthur Village. When some of the villagers tried to grab the land, a suit, being O.S.No.112 of 1978, on the file of the Court of the Principal District Munsif, Nandikotkur, was filed by Pinjari caste people for perpetual injunction. The same was decreed on 27.02.1987 relying on two reports of the Advocate Commissioners. Nonetheless, the Sarpanch of the Gram Panchayat, fourth respondent herein, proclaimed the villagers that a shopping complex would be constructed in the place. The petitioner gave a representation to respondents 1 to 3, and the local M.L.A also addressed them. In spite of the same, on 30.01.2007 respondents 3 and 4 came to the graveyard and started clearing the land for the purpose of constructing the shopping complex.

At the stage of admission itself, the Sarpanch has filed a counter affidavit. The averments in the counter would show that the land

admeasuring Ac.0.20 cents in Survey No.678/B/1A of Midthur Gram Village is a burial ground, which is surrounded by a compound wall. The Gram Panchayat is not a party to O.S.No.112 of 1978, and therefore, is not aware of the decree. In the year 2000, the Gram Panchayat started construction of the shopping complex abutting the road near the graveyard. The construction was completed up to basement level. However, eleven persons occupied the basement and raised small bunks for doing petty business like tea stall, milk vending, pan shop etc. The Gram Panchayat passed a resolution on 06.11.2006 for removal of the encroachment, which was sanctioned by the District Collector on 12.01.2007. Therefore, the staff of the Gram Panchayat and staff from the Offices of the Mandal Revenue Officer, Mandal Development Officer and Mandal Parishad Development Officer as well as the Divisional Panchayat Officer and Station House Officer removed the encroachments. After removing the encroachments, the Gram Panchayat started construction from basement level. As per the sketch prepared by the Mandal Surveyor the burial ground is surrounded by compound wall and the shopping complex is being constructed outside the compound wall. Respondents 3 and 4 have not taken up any construction. The Secretary to the petitioner-Society, Sri Hameed Basha, encroached the basement of the shopping complex and when the same was removed, he filed the present Writ Petition by making false allegations. The shopping complex, being constructed by SGRY funds, is outside the burial ground abutting the compound wall and the burial ground.

The petitioner filed a reply affidavit denying the counter averments. It is alleged that the land admeasuring Ac.0.41 cents is earmarked as burial ground and there is no place for construction of shopping complex. The petitioner also filed two third party affidavits in support of its case.

Learned Counsel for the petitioner submits that the total extent of land in Survey No.678/B/1A is earmarked as burial ground. Taking advantage of the compound wall, the Gram Panchayat is constructing shopping complex within the place identified as burial ground, and the same is not permissible. **Per contra**, the learned Standing Counsel for Gram Panchayats and the learned Assistant Government Pleader for Revenue submit that as per the report submitted by the Mandal Surveyor the total extent of graveyard is only Ac.0.20 cents and not Ac.0.41 cents. They also submit that the shopping complex was commenced in 2000 and steps are being taken now to complete the

construction. The petitioner-Society never raised any objection and has come forward only when the Secretary was evicted from the encroachment of the basement of the shopping complex.

In the affidavit accompanying the writ petition, the petitioner does not specifically mention the extent of the graveyard. In the judgment of the Court of the Principal District Munsif, Nandikotkur, in O.S.No.112 of 1978, the property is described in vague terms. The two reports of the Advocate Commissioners also did not mention any exact extent of the land. It is described as the burial ground of Pinjari people by the side of Nookala Rami Reddy's Kallam which is shown in plan ABCD (see the report of the Advocate Commissioner, dated 30.06.1978). A sketch is also annexed to the said report, which would certainly show that there were quite a few constructions abutting the compound wall of the burial ground. This would certainly belie the contention of the petitioner that the total extent of the burial ground is Ac.0.41 cents. Secondly, the Gram Panchayat commenced the construction of shopping complex in 2000. For one reason or other, it could not be completed. Further, all the encroachments were removed in November 2006 and after removal of the encroachments the construction was started from basement level. These averments in paragraphs 6 and 7 of the counter affidavit have been specifically denied in the reply affidavit. This would certainly belie the case of the petitioner that the shopping complex is being constructed now. The petitioner has not raised any objection for the last about six years, and suddenly it came up with this Writ Petition. The Writ Petition is not *bona fide*.

In the result, the Writ Petition is dismissed. No costs.

_____

(V.V.S.RAO, J)

13.03.2007
vs